

Resolution Urging Congress to Restore State Sales Tax Collection Sovereignty

Summary

The Supreme Court of the United States held in *Quill* (1992) that a state cannot require a retailer without a physical presence in the state to collect tax on sales to consumers in the state. Importantly, the Court recognized “that the underlying issue is not only one that Congress may be better qualified to resolve, but also one that Congress has the ultimate power to resolve.” Congress should act, consistent with the American Legislative Exchange Council (ALEC) Principles of Taxation, to authorize states, subject to the enactment of any necessary state laws, to require all retailers whose sales to consumers in the state exceed a minimum threshold to collect applicable sales taxes on sales in the state.

Resolution to Congress

WHEREAS, the Supreme Court of the United States held in *Quill v. North Dakota*, 504 U.S. 298 (1992) that the “dormant” or “negative” Commerce Clause of the United States Constitution prohibits a state from requiring a retailer to collect sales tax on sales to consumers in the state unless the retailer has physical presence in the state, and;

WHEREAS, the Supreme Court further held “that the underlying issue is not only one that Congress may be better qualified to resolve, but also one that Congress has the ultimate power to resolve,” and;

WHEREAS, the sales tax, as applied to consumer purchases, is the most transparent tax levied by state and local governments, and;

WHEREAS, the sales tax is, from the individual consumer’s perspective, one of the simplest taxes imposed by state and local governments, and more than 20 states have worked to make it simpler for retailers that collect the tax in multiple states, and;

WHEREAS, the most complex aspect of sales taxation for consumers is the requirement to pay “use” tax directly to the state when sales tax is not collected by the retailer, and;

WHEREAS, current federal policy prohibiting uniform sales tax collection violates the principle of economic neutrality by favoring some retailers over others and encouraging consumers to evade paying legally owed taxes, and;

WHEREAS, this federal policy also violates the principle of equity and fairness because it uses the tax system to pick winners and losers in the marketplace, and;

WHEREAS, the sales tax is the one major tax that is frequently both a state and local tax, and uniform collection of the sales tax will help to strengthen state and local tax systems, and;

DRAFT – FOR DISCUSSION PURPOSES ONLY – DRAFT

47 WHEREAS, consumption taxes, like the sales tax with appropriate exemptions to minimize tax
48 pyramiding on business inputs, are among the most economically neutral taxes and are a
49 necessary component to achieve effective competitiveness, and;

50
51 WHEREAS, the sales tax is one of the most stable sources of state revenue and provides
52 certainty for both states and taxpayers,

53
54 WHEREAS, federal legislation authorizing states to require all retailers whose sales to
55 consumers in those states exceed a minimum threshold to collect sales taxes has garnered support
56 from businesses and business groups large and small and organizations across the political
57 spectrum, and;

58
59 WHEREAS, such federal legislation would allow states to improve the collection of legally
60 owed sales taxes and thus provide flexibility to lower tax rates for all taxpayers;

61
62 NOW THEREFORE LET IT BE RESOLVED, ALEC urges Congress to enact legislation,
63 consistent with ALEC Principles of Taxation, to authorize states, subject to the enactment of any
64 necessary state laws, to require all retailers whose sales to consumers in the state exceed a
65 minimum threshold to collect applicable sales taxes on sales in the state, and;

66
67 BE IT FURTHER RESOLVED, copies of this resolution shall be distributed to all Governors
68 and members of the United States House of Representatives and United States Senate.



COMMONS
Holding Power Accountable

SPRING TASK FORCE SUMMIT
COMMUNICATIONS AND TECHNOLOGY TASK FORCE
LUNCHEON TENTATIVE AGENDA
FRIDAY, MAY 11, 2012

1:00pm-2:00pm – Task Force Luncheon – Providence II (luncheon begins serving at 12:45pm)

- State Communications Tax Reforms: What's Happened and What Comes Next – *Eric Tresh of Sutherland Asbill & Brennan LLP*



COMMON CAUSE
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COMMUNICATIONS AND TECHNOLOGY TASK FORCE

TASK FORCE MEETING TENTATIVE AGENDA

FRIDAY, MAY 11, 2012

2:15pm-5:15pm – Task Force Meeting – Providence II

Preliminary and Old Business

- Welcome, Introductions, and Approval of the Minutes from the ALEC 2011 States and Nation Policy Summit – *Rep. Blair Thoreson of North Dakota*

Presentations

- “The Wisconsin Telecommunications Modernization Act: One State’s Landmark Communications Reforms” – *Rep. Paul Farrow of Wisconsin*
- “Cloud Computing: The Cloud Imperative” – *Aldona Valicenti of CGI, Inc.*
- “States and the Smart Grid Imperative” – *Charles Davidson of New York Law School*
- “The March 2012 iAWFUL: the 10 worst Internet laws in America” – *Steve DelBianco of NetChoice*
- “A partnership for public safety: Charlotte’s 4G LTE network” - *Chuck Robinson, City of Charlotte*

Model Legislation

- Consideration of Model Legislation Working Group Recommendations – *Rep. Don Parsons of Georgia and Kelly William Cobb of Digital Liberty*
- Consideration of the Facilitating Business Rapid Response to State Declared Disaster Act of 2012 – *TBD¹*
- Consideration of An Act Relating to Biometric Information – *Rep. Lora Hubbel of South Dakota²*

Reports and New Business

- Report from the Joint Working Group on 21st Century Commerce and Taxation – *John Nothdurft of the Heartland Institute*
- Report from the Task Force Principles Working Group – *Sen. Joel Anderson of California*
- Report from the Online Consumer Privacy Working Group – *Bartlett Cleland of the Institute for Policy Innovation*
- Announcements – *John Stephenson of ALEC*

¹ Dual Referral from Tax and Fiscal Policy Task Force

² Dual Referral from Public Safety and Elections Task Force

Telecommunications & Information Technology Task Force Meeting
ALEC's 2011 States and Nation Policy Summit
Phoenix, AZ
Thursday, December 1, 2011
Meeting Draft Minutes

I. WELCOME, INTRODUCTIONS, AND OLD BUSINESS

The meeting began at 2:30pm local time. Rep. Blair Thoreson of North Dakota and Bartlett Cleland of the Institute for Policy Innovation, respectively the Task Force Public and Private Sector Chairs, opened the meeting by welcoming the 77 attendees. Task Force members and guests present introduced themselves.

On a motion by Rep. Thoreson, the Task Force unanimously adopted minutes from its meeting as part of the ALEC 2011 Annual Meeting in New Orleans.

II. PRESENTATIONS (in chronological order)

To inaugurate the Task Force's new "Spotlight on the States" series, Rep. Marilyn Avila of North Carolina gave a presentation about her state's recent legislative battle over municipal broadband networks. Rep. Terri Proud also co-presented with representatives from the Arizona Department of Public Safety on recent cyberattacks against the state of Arizona.

Adam Thierer, Research Fellow with the Mercatus Center and Task Force advisor, was the second to present on current trends in online consumer privacy. He also provided a brief update on discussions at the consumer privacy working group and efforts to revise the 2003 ALEC Statement of Principles for Online Consumer Privacy.

The next to present was Charles Davidson, Director of the Advanced Communications Law and Policy Institute at New York Law School, who provided the Task Force with a brief overview of regulatory modernization trends at the federal and state levels of government.

John Nothdurft of the Heartland Institute provided an update from the Joint Working Group on 21st Century Commerce and Taxation. Nothdurft, who serves as Private Sector Chair of the Working Group, informed the Task Force that discussions continue about possible changes to ALEC policy on taxes for online retail sales.

Then, the Task Force heard a presentation from Walter Hamilton of the International Biometrics and Identification Association on current trends and issues in the uses of biometric technologies.

Steve DelBianco of NetChoice reported to the Task Force on current issues in Internet governance, specifically recent proclamations from the ICANN meetings on "top level Internet domains."

Lyndsay O'Herrick of Comcast and Mike Hiltner of Best Buy Stores presented on Connect-to-Compete, a private sector initiative involving their respective companies and others to provide low-cost broadband access, computer equipment, and training for low-income families. Rick Cimerman of NCTA and Jim Wall of Microsoft also spoke about their involvement in the program. Rep. Thoreson asked for a show of hands from private sector members involved in efforts like Connect-to-Compete; most raised their hands.

Finally, Tom Giovanetti of the Institute for Policy Innovation provided a brief update on the court case challenging the FCC's net neutrality order.

Members posed questions to each of the presenters.

III. LEGISLATION

Rep. Calvin Hill of Georgia offered a motion to recommend to the ALEC Board of Directors that the Task Force change its name to the Communications and Technology Task Force. The motion was seconded and the vote in favor was unanimous.

Rep. Thoreson announced his intention to withdraw his Resolution in Support of Federal Efforts to Address Rogue Internet Sites that Sell Counterfeit Products and Facilitate Digital Theft. Mr. Cleland explained that the Resolution would be referred to a special working group comprised of Executive Committees of the Task Forces with jurisdiction over the issue. The Executive Committees were directed to report back to the Task Forces with their recommendations for a model resolution. Diane Katz of the Heritage Foundation raised a point of order regarding this process. Task Force Director John Stephenson and Senior Director of Policy Michael Bowman explained that such a process was allowed under ALEC rules. After Mr. Cleland ruled the point of order improper, Ms. Katz appealed the ruling of the chair. The appeal failed.

Due to limitations on time, Kelly William Cobb of Americans for Tax Reform and Rep. Don Parsons of Georgia agreed to a request by the chairmen to postpone consideration of the Task Force's Model Legislation Review Working Group recommendations.

IV. NEW BUSINESS

Mr. Cleland announced the formation of a new working group to write a new universal statement of communications policy principles for the Task Force to consider at a future meeting. Mr. Stephenson reported on a Task Force effort to develop a model solution so that ALEC members can access organization resources from smartphones and tablet PCs and a new policy index modeled on "Rich States, Poor States."

V. ADJOURN

The Task Force meeting adjourned at approximately 5:45pm on a motion by Rep. Thoreson that was unanimously adopted.

MOTION

Rep. Don Parsons and Mr. Kelly William Cobb move to repeal the Life Line Telephone Service Guidelines by striking the following:

~~Life Line Telephone Service Guidelines~~

~~(The American Legislative Exchange Council does not endorse lifeline telephone service. In many States, lifeline programs are in place or likely will be proposed. The following guidelines can be used by legislators to modify proposed or current lifeline programs to ensure that they are appropriately limited in scope.)~~

~~One of the nationally accepted policy objectives for telephone service is often referred to as “universal service,” as articulated in the Federal Communications Act of 1934. The objective is to make reasonably priced telephone service available to as broad a range of citizens as possible, particularly to the poor and handicapped who might otherwise be unable to afford telephone service. At the same time, the interest of telephone customers and telephone companies is best served by retaining as many paying customers as possible.~~

~~Federal and state regulatory bodies are responding to advances in telecommunications technology by deregulating that industry and fostering competition in more areas of telecommunications. This move toward increased competition brings with it a necessity to more closely align rates with costs, thereby reducing or eliminating telephone subsidies.~~

~~As subsidies erode, those customers receiving their benefits primarily residential customers bear more of the actual costs of telephone service.~~

~~Recognition of the additional pressure on the telecommunications industry has caused many to be concerned that price increases for residential telephone service will threaten the universal service objective.~~

~~Lifeline service is intended to ensure that needy people who rely on the telephone for medical, fire and police emergencies and other essential needs can continue to afford basic telephone service.~~

~~Lifeline services also is intended to mitigate the effects of increasing telephone rates on the poor and the handicapped who rely on telephone services and would be isolated without it. Without lifeline services, many of these people would be unable to retain the benefits of telephone service as prices rise to reflect the actual cost of the service.~~

~~——— When considering a lifeline service plan, it is important to clearly define its~~

40 objective, so that subsidies can be properly targeted to areas of real need and expenses
41 strictly limited to the amount necessary to achieve the objective.

42 Moreover, lifeline service plans should meet the following guidelines:

43 (A) lifeline telephone service should be a minimal, essential need service, directed to
44 those individuals truly in need; the service should be limited to individuals (e.g.
45 the poor and handicapped) who would otherwise have a difficult time
46 communicating with the outside world;

47 (B) there should be a means test for those people considered for lifeline telephone
48 service, such as limiting lifeline service to people who qualify for other state
49 assistance programs; a state social services agency should be responsible for
50 qualifying eligible recipients;

51 (C) lifeline service should be funded from general state revenues; the availability of
52 lifeline service is a social decision and should be funded in the same way as other
53 social programs; it is appropriate that lifeline service be funded by state revenues
54 rather than by increasing rates to other telephone company customers; the best
55 way of handling this subsidy would be in the form of tax credit applied to the
56 telephone company's tax liability.

57



COMMON SENSE
Holding Power Accountable

MOTION

Rep. Don Parsons and Mr. Kelly William Cobb move to repeal the Concurrent Resolution Creating a Special Joint Committee to Develop a Comprehensive Telecommunications Plan for the States and to Make Recommendations Thereon to the Legislature by striking the following:

~~A Concurrent Resolution: Creating a Special Joint Committee to Develop a Comprehensive Telecommunications Plan for the State and To Make Recommendations Thereon To the Legislature; To Provide For the Membership and Organization of the Joint Committee; And For Related Purposes~~

Summary

~~The challenge for states is to maximize the use of the existing telecommunications infrastructure and plan for a long-range solution to the diverse needs of each state which will deploy the necessary technology at a price consumers can afford, regulators can approve and the private sector can provide. This produces an equitable solution to both public and private sector and will enable the stat to compete in the worldwide information marketplace. This evolutionary approach envisions the expansion of high capacity fiber optic communications to provide the broadband telecommunications solutions to many of today's problems in educating and restraining our workforce, providing quality and affordable health care to citizens in rural areas, generating productive jobs, increasing security to individuals and businesses, and increasing the competitive production of goods and services.~~

Model Legislation

~~WHEREAS the Federal Interstate Highway Program was enacted by Congress to provide a 21st Century infrastructure for the transportation of its citizens and commodities; and~~

~~WHEREAS the legislature believes that the need for a telecommunications "superhighway" should be studied in order to provide a state-of-the-art infrastructure for the transportation of telecommunications including information services, distance learning, telemedicine, telecommuting, and many others that may not have been identified; and~~

~~WHEREAS telecommunications offers solutions in the fields of education, transportation, healthcare, governmental information services, law enforcement, and~~

36 other areas. Each of these needs should be considered in order to design an infrastructure
37 that can satisfy them; and

38
39 WHEREAS the objective is to develop a plan which provides the flexibility to deploy
40 the necessary technology at a price consumers can afford, state regulators can approve,
41 and the private sector can deliver. The ideal solution will attract industry and benefit
42 consumers with state-of-the-art services that are universally available at affordable costs.

43
44 NOW, THEREFORE, BE IT RESOLVED BY THE STATE SENATE, THE
45 HOUSE OF REPRESENTATIVES CONCURRING THEREIN, that there is hereby
46 created a special joint committee to develop a comprehensive telecommunications plan
47 for the state and to make recommendations thereon to the legislature and

48
49 BE IT FURTHER RESOLVED that the joint committee shall be composed of two
50 senators to be appointed by the lieutenant governor and two members of the House of
51 Representatives to be appointed by the Speaker of the House of Representatives. The
52 lieutenant Governor shall appoint the chairman to the joint committee and the Speaker of
53 the House of Representatives shall appoint the vice chairman. The vice chairman shall
54 also serve as secretary and shall be responsible for keeping all records of the joint
55 committee. A majority of the members of the joint committee shall constitute a quorum.
56 All members shall be notified in writing of all meetings. Such notices shall be mailed at
57 least five days prior to the date on which a meeting is to be held; and

58
59 BE IT FURTHER RESOLVED that the joint committee is authorized to accept any
60 money from any source, public or private, to be expended in implementing its duties
61 under this resolution; and

62
63 BE IT FURTHER RESOLVED that the joint committee shall not hire any state
64 employee, but shall utilize the clerical and legal staff already employed by the House and
65 Senate; and

66
67 BE IT FURTHER RESOLVED to develop a comprehensive telecommunications plan
68 for the state, that joint committee should identify all of the diverse needs of the state and
69 its citizens, analyze existing facilities and systems, and design an ultimate infrastructure.
70 In order to identify needs, a broad array of telecommunications user and providers should
71 be surveyed. Regulators, educators, transportation officials, health care providers, prison
72 commissions, local exchange telephone companies, inter-exchange carriers, computer
73 companies, broadcasters, cable companies, electric power associations, and many others
74 shall be invited to participate in the identification of long and short term needs; and

75
76 BE IT FURTHER RESOLVED that existing facilities and systems includes copper
77 cables, coaxial cables, fiber optic cables, microwave radio systems, AM and FM radio
78 transmission facilities, satellite systems, cellular, and mobile systems. While all these
79 facilities are available to meet specific needs, and integrated approach will provide
80 efficient, cost-effective use of the total telecommunications infrastructure; and

81

82 ~~BE IT FURTHER RESOLVED~~ that the joint committee shall recommend the financial
83 resources to be used to implement the plan over the appropriate timetable. The joint
84 committee shall review laws relating to the telecommunications industry and shall make
85 recommendations to remove any barriers which would prevent or delay implementation
86 of the plan.

COMMON CAUSE
Holding Power Accountable



MOTION

Rep. Don Parsons and Mr. Kelly William Cobb move to repeal the Utility Gross Receipts Tax Act by striking the following:

~~Utility Gross Receipts Tax Act~~

~~*Suggested Legislation*~~

~~[Title, enacting clause, etc.]~~

~~Section 1. [Definitions.]~~

~~(A) "Telephone company" means a person who owns or operates a telephone line or a telephone network in this State, charges for its use, and is regulated by the public utility commission as a certificated provider of local exchange telephone service.~~

~~(B) "Local exchange telephone service" means the provisions by a telephone company of an access line and dial tone to a fixed location for sending and receiving telecommunications in the telephone company's local exchange network.~~

~~(C) "Gross operating revenues" from a telephone company means the total revenues derived from the provision of local exchange telephone service. "Gross operating revenues" does not include any amounts received by a person or business for the provision of facilities, billing services or other services or network access utilized by another business or person in its provision of telecommunications services.~~

~~*Classification of Property for Taxation*~~

~~Section 2. [Classification of Property for Taxation]~~

~~(A) There are established the following classes of property for taxation:~~

~~(1) — Class one: All real and personal property except that which is included in Class Two.~~

~~(2) — Class two:~~

~~(a) All property, both real and personal, of gas, water, and electric utility companies and pipeline companies; or~~

~~(b) All real and personal property used to provide local exchange telephone services.~~

~~Section 3. [Severability Clause.]~~

~~Section 4. [Repealer Clause.]~~

~~Section 5. [Effective Date.]~~

MOTION

Rep. Don Parsons and Mr. Kelly William Cobb move to repeal the Emergency Telephone Service Enabling Act by striking the following:

~~Emergency Telephone Service Enabling Act~~

~~It is in the public interest to provide for a single, primary three digit emergency number through which emergency services can be quickly contacted by the public. This act will provide some general guidelines to set up a 9-1-1 emergency number.~~

~~Model Legislation~~

~~[Title, enacting clause, etc.]~~

~~Section 1. [Short Title] This act shall be cited as the Emergency Telephone Service Enabling Act~~

~~Section 2. [Purpose] The General Assembly finds that is in the public interest to provide for a single, primary three digit emergency number through which emergency services can be quickly contacted by the public. The primary emergency telephone number for the state shall be 9-1-1.~~

~~Section 3. [Definitions.]~~

~~Section 4. The local governing body shall establish an E-9-1-1 commission and approve the E-9-1-1 Commission's service plan.~~

~~Section 5. The E-9-1-1 Commission shall establish security requirements outlined by the service supplier; determine the number and location Public Safety Answering Points, perfect address and numbering plans, and devise and E-9-1-1 service plan.~~

~~Section 6. Unless waived, a public referendum shall be utilized to establish a E-9-1-1 System.~~

~~Section 7. Private listing subscribers waive any privacy afforded by non-listed or non-published numbers.~~

~~Section 8. E-9-1-1 service plans should be calculated on an individual basis.~~

~~Section 9. All E-9-1-1 nonrecurring and recurring costs should be funded by a state general revenue tax.~~

~~Section 10. Neither nonrecurring nor recurring costs shall include overhead, supplies, personnel, vehicles or building costs not directly related to the provision of the E-9-1-1 system.~~

~~Section 11. Each local governing body shall pay all costs of establishing, furnishing, equipping and maintaining Public Safety Answering Points.~~

~~Section 12. Costs for E-9-1-1 service plans would be calculated on an individual basis.~~

~~Section 13. Nonrecurring costs should be billed to the local governing body. Recurring costs should be paid directly to the service supplier.~~

~~Section 14. Billing and service for the E-9-1-1 service should be provided on a exchange basis rather than county line basis. If not, all additional costs should be in addition to the nonrecurring and recurring costs within the E-9-1-1 service plan.~~

~~Section 15. Local exchange services shall provide to the E-9-1-1 service supplier all names, addresses and telephone numbers of its subscribers within the E-9-1-1 service area with compensation for such determined within its tariff. Subscriber information remains the property of the local exchange service and cannot be used for any purposes other than E-9-1-1 service requirements.~~

~~Section 16. Competitive bidding is not required to use the local telephone network to provide E-9-1-1 Service, which is approved by the local governing body or E-9-1-1 Commission, because of local telephone boundary assignments.~~

~~Section 17. The service supplier is not liable for any damages or loss associated with the E-9-1-1 system unless willful and wanton negligence is present.~~

~~Section 18. An unpublished alternative emergency number shall be maintained for use by emergency operators and services.~~

~~Section 19. All pay station or coin-operated telephones shall be converted to allow 9-1-1 emergency calls to be made without charge.~~

~~Section 20. [Severability Clause.]~~

~~Section 21. [Repealer Clause.]~~

~~Section 22. [Effective Date.]~~

MOTION

Rep. Don Parsons and Mr. Kelly William Cobb move to repeal the Alternate Certification for Distance Learning Instructors Act by striking the following:

1 ~~Alternate Certification for Distance Learning Instructors Act~~

2 *Summary*

3 ~~It is the ultimate responsibility of the state to guarantee students access to the best~~
4 ~~possible education. Traditionally this has been provided through on site teachers, but~~
5 ~~increasingly the states are turning to private sector experts as the best source for up to~~
6 ~~date instruction. Often these experts can be brought into the class through distance~~
7 ~~learning facilities. In order to prepare students for the twenty first century, they must~~
8 ~~learn from specialists, the technological experts in the constantly changing high demand~~
9 ~~areas of mathematics, science and foreign languages.~~

10 ~~While many of these experts are not certified teachers, they remain highly qualified~~
11 ~~instructors for children. Accordingly, the state has an overriding interest, in the case of~~
12 ~~educating our students, to provide an alternate or cross border waiver from teacher~~
13 ~~certification for proficient distance learning instructors.~~

14 *Model Legislation*

15 ~~Section 1. {Title.} This Act may be cited as the Alternate Certification for Distance~~
16 ~~Learning Instructors Act.~~

17 ~~Section 2. {Statement of Purpose.} Be it enacted by the legislature that the (Education~~
18 ~~Code), relating to the authority of school districts to certify persons to teach who are not~~
19 ~~graduates of teacher education programs, is amended by adding (Section) to read as~~
20 ~~follows: District Certification:~~

21 ~~(A) The (State-local) board of trustees of a school district shall by written policy provide~~
22 ~~for the certification and employment as distance learning instructors of persons who do~~
23 ~~not hold teaching certificates issued by the state.~~

24 ~~(B) If a distance learning instructor is already a certified teacher in another state and the~~
25 ~~distance learning class originates in said state, their certification shall be recognized and~~
26 ~~deemed sufficient.~~

27 ~~(C) Instructors who are not certified by the state, but who have expertise in the studies of~~
28 ~~mathematics, science, and foreign languages, shall be utilized and approved by the (State-~~
29 ~~local) board of trustees of a school district as a distance learning instructor if:~~

30 ~~(1) there are no certified teachers available who are of equal technical competence in~~
31 ~~their area of expertise and in dealing with the distance learning technology; and~~

32 ~~(2) there shall be a certified teacher/facilitator in the classroom with the students during~~
33 ~~the distance learning class.~~

34 ~~(D) The policy must provide for a person being certified to satisfactorily complete:~~

35 ~~(1) an examination of general knowledge to determine if the person's basic skills in~~
36 ~~reading, writing, and mathematics are sufficient to perform satisfactorily as a teacher; and~~

37 ~~(2) a one-semester provisional certification~~

38 ~~(E) To qualify under this Act for provisional certification to teach primary grades, a~~
39 ~~person shall have a bachelor's degree from an institution of higher education that is~~
40 ~~accredited by a recognized accrediting agency.~~

41 ~~(F) To qualify under this Act for provisional certification to teach secondary grades, a~~
42 ~~person must have a bachelor's degree from an institution of higher education that is~~
43 ~~accredited by a recognized accrediting agency.~~

44 ~~(G) The (State local) board shall issue final cross-border waiver based on terms stated in~~
45 ~~Section 2(B).~~

46 ~~(H) The (State local) board shall issue final certification based on an evaluation of:~~

47 ~~(1) the person's academic knowledge;~~

48 ~~(2) the person's ability to communicate information effectively to pupils;~~

49 ~~(3) the person's ability to utilize effectively the distance learning technology;~~

50 ~~(4) the academic achievement of pupils taught by the person during professional~~
51 ~~certification.~~

52 ~~(I) The board shall report the issuance of a certificate of cross-border waiver under this~~
53 ~~Act to the (state board of education).~~

54 ~~(J) A person certified under this Act shall be subject to all provisions of this code relating~~
55 ~~to teachers except any provision that requires a teaching certificate required by the state.~~

56 ~~(K) The (certifying agency) of a school district shall recognize as reciprocal, within that~~
57 ~~district, a certification or cross-border waiver that was issued under this Section by~~
58 ~~another district.~~

59 ~~(L) After the provisional certificate the district shall present the individual to the state~~
60 ~~certification board for full certification or permanent cross-border waiver.~~

61 ~~(M) The state shall certify any person presented by a school district for full certification~~
62 ~~or permanent waiver.~~

63 ~~(N) Every three years the state board shall review the candidate submissions from the~~
64 ~~districts to evaluate the effectiveness and quality of the individual district programs.~~

65 ~~Section 3. {Definitions.} “Distance learning” means the transmission of educational~~
66 ~~information and interaction of geographically dispersed individuals or groups through a~~
67 ~~single medium or a combination of audio, video, and data.~~

68 ~~Section 4. {Severability clause.}~~

69 ~~Section 5. {Repealer clause.}~~

70 ~~Section 6. {Effective date.}~~

71 ~~*ALEC's 1995 Sourcebook of American State Legislation*~~



COMMON CAUSE
Holding Power Accountable

MOTION

Rep. Don Parsons and Mr. Kelly William Cobb move to repeal the Resolution Concerning Management of the National Spectrum by striking the following:

~~A RESOLUTION CONCERNING MANAGEMENT OF THE NATIONAL SPECTRUM~~

Summary

Radio spectrum is the medium by which many everyday services, such as radio and television, are brought to the homes and businesses of America. As technology increases so does the demand on finite spectrum. Today, spectrum allocation is essentially “free”, which means that users of radio and other services are not required to pay user fees or taxes, which would compensate for access to, or use of, a national resource. Any rational user of a resource, when confronted with no cost for that resource, has little or no incentive to use less. Therefore, users of spectrum see little benefit in spending additional funds to switch to new technologies and equipment for the purpose of achieving spectrum efficiency.

~~Model Resolution~~

~~For the purpose of urging Congress to ensure that the nation's radio spectrum is managed by the nation as an invaluable, finite resource by encouraging the most efficient use and fullest deployment of spectrum-based, or wireless, telecommunications services to the greatest number of people at the least possible costs.~~

~~WHEREAS~~ radio-based, or wireless, telecommunications services have always been a critical component of the communications infrastructure of a modern nation, allowing the wide deployment and use of such services as broadcast television and radio, air traffic control, radio services for the national defense, cellular telephones, microwave telecommunications, and radio services for emergency services providers;

~~WHEREAS~~ radio spectrum has become extremely crowded with many competing users and is a finite resource, with limits on the amount of usable spectrum;

~~WHEREAS the inherent inefficiency associated with the nation's current allocation of free spectrum provides no incentive for private and government entities to use spectrum in a more efficient manner;~~

~~WHEREAS~~ the introduction of new radio-based, or wireless telecommunications services, such as high definition television and personal communications services, having vast potential to increase America's competitive edge and to improve the quality of

everyday life for all Americans are being delayed because of the immediate need for additional spectrum to be allocated;

~~WHEREAS~~ in order to ensure more efficient use of any future allocations of new spectrum, public policy must foster multiple diverse competitors, including experienced telecommunications providers, to seek licenses for these frequencies;

~~WHEREAS~~ market-based mechanisms should be used to deter uncontrolled speculation that has occurred in prior allocations of spectrum and the subsequent awarding of radio construction permits and licenses;

~~WHEREAS~~ the importance of wireless services requires a consistent regulatory policy, including streamlining regulation and deregulation of all competitive services, so that new services are deployed in ways that are more efficient and responsive to marketplace demands.

~~NOW THEREFORE BE IT RESOLVED~~ that all state delegations to the United States Congress and Commissioners of the Federal Communications Commission are urged to vigorously support all appropriate legislation, with sufficient safeguards to ensure continued consumer protection and states rights, that would further the development of and deployment of new radio-based, or wireless, technologies that will bring many public benefits by increasing America's competitive edge and improving the quality of everyday life for all Americans;

~~BE IT FURTHER RESOLVED~~ that any such Congressional actions and legislation should focus upon, or contain, the intent of the following guidelines:

—— Implement market-based mechanisms, such as competitive bidding or auctions for spectrum assignment, which would greatly reduce or eliminate speculation;

—— Reduce regulation and rules to encourage flexible use of all assigned frequencies, while maintaining broad requirements for compatibility and interference protection, thereby encouraging development of new innovations in services and ensuring more efficient use of all assigned spectrum

—— Ensure that allocation and frequency assignments carefully and fairly balance the competing demands of new, proposed services and the rights of existing users of more mature technologies and services;

—— Promote the continued development of a national public-switched network as the ultimate backbone for an integrated, national communications system, encompassing both wire and radio-based telecommunications service;

—— Promote the deployment of fiber and other wire-based networks by all private telecommunications companies, so that spectrum can be reallocated from point-to-point microwave systems, television broadcasters, and, to a lesser extent, radio broadcasters to

67 new, more efficient spectrum services, such as cellular mobile telephone, proposed
68 personal communications services, and to meet the growing needs of state and local
69 public safety providers;

70 ——— Ensure regulatory and tax parity among all new and existing radio-based
71 competitors who offer like, or similar, telecommunications services.

72 ~~BE IT FURTHER RESOLVED~~ that the staff of the American Legislative Exchange
73 Council transmit copies of this resolution to the President and Vice President of the
74 United States, the Speaker of the House of Representatives, the President of the Senate,
75 to all state delegations to the United States Congress and to all Commissioners of the
76 Federal Communications Commission.

77 ~~As adapted from an ALEC State Factor written and approved by the Task Force on~~
78 ~~Telecommunications in February of 1990.~~



COMMON CAUSE
Holding Power Accountable

MOTION

Rep. Don Parsons and Mr. Kelly William Cobb move to repeal the Resolution Urging Congress to Open the Cable Industry to More Competition in the Marketplace by striking the following:

~~Resolution Urging Congress to Open the Cable Industry to More Competition
in the Marketplace~~

~~*Model Resolution*~~

~~WHEREAS, It is in the public interest to provide competition for existing cable TV services, both transmission and programming, through a telephone network capable of video transmission to enhance the development of new technologies and faster introduction of products and services to the marketplace; and~~

~~WHEREAS, An integrated broadband network will provide consumers with greater choices of video program suppliers and preferred services — advantages that would be extended ultimately to all consumers, rural and urban, so as to avoid a divided society of information “haves” and “have nots”; and~~

~~WHEREAS, A statewide fiber optic network will serve as a vital component to the states’ future public and continuing education structures; and~~

~~WHEREAS, A highly featured telephone network capable of video transmission would be an asset to international competitiveness for the U.S. and economic development within the states; and~~

~~WHEREAS, An adequate accounting and structural safeguards have been developed and are already in place in the state and federal jurisdiction to protect against cross-subsidization from telephone customers; now, therefore be it~~

~~RESOLVED, that the legislature of the state of (_____) urges Congress to enact appropriate legislation to open up the cable market to competition, to enhance the development of new technologies, and to modernize the telecommunications infrastructure; and be it further~~

~~RESOLVED, that the Clerk of the House/Senate transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, the President of the Senate, and to every member of the Congress and Senate of the United States.~~

~~Passed by the Task Force on Telecommunications October 7, 1989.~~



COMMON CAUSE

Holding Power Accountable

Facilitating Business Rapid Response to State Declared Disaster Act

Summary

An Act to amend the state public services law, state law and tax law in relation to thresholds for establishing presence, residency or doing business in the state for out-of-state employees and companies including affiliates of in-state companies that temporarily provide resources and personnel in the state during a state of emergency declared by either the Governor or the President of the United States.

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Short Title.}

This Act may be cited as the “Facilitating Business Rapid Response to State Declared Disasters Act of 2012”.

Section 2. {Findings.}

A. The Legislature finds that –

1. During times of storm, flood, fire, earthquake, hurricane or other disaster or emergency, many companies bring in resources and personnel from other states throughout the U.S. on a temporary basis to expedite the often enormous and overwhelming task of cleaning up, restoring and repairing damaged buildings, equipment and property or even deploying or building new replacement facilities in the state.

2. This may involve the need for out-of-state companies, including out-of-state affiliates of companies based in the state to bring in resources, property and/or personnel that previously have had no connection to the state, to perform activity in the state including but not limited to repairing, renovating, installing, building, rendering services or other business activities and for which personnel may be located in the state for extended periods of time to perform such activities.

3. During such time of operating in the state on a temporary basis solely for purposes of helping the state recover from the disaster or emergency, these companies and individual employees should not be burdened by any requirements for business and employee taxes as a result of such activities in the state for a temporary period.

4. The state’s nexus and residency thresholds are intended for businesses and individuals in the state as part of the conduct of regular business operations or who intend to reside in

the state and should not be directed at companies and individuals coming into the state on a temporary basis to provide help and assistance in response to a declared state disaster or emergency.

5. To ensure that companies may focus on quick response to the needs of the state and its citizens during a declared state disaster or emergency it is appropriate for the legislature to deem that such activity for a reasonable period of time during and after the disaster or emergency for repairing and restoration of the often devastating damage to property and infrastructure in the state shall not establish presence, residency, nor doing business in the state nor any other criteria for purposes of state and local taxes, licensing and regulatory requirements.

Section 3. {Definitions.}

A. For purposes of this Act, the following terms shall have the following meanings:

1. “Registered Business in the State” (or “Registered Business”) means a business entity that is currently registered to do business in the state prior to the declared state disaster or emergency.

2. “Out-of-State Business” means for purposes of this legislation a business entity that has no presence in the state and conducts no business in the state whose services are requested by a Registered Business or by a state or local government for purposes of performing Disaster or Emergency Related Work in the state. This shall also include a business entity that is affiliated with the Registered Business in the State solely through common ownership. The “Out-of-State Business” has no registrations or tax filings or nexus in the state prior to the declared state disaster or emergency.

3. “Out-of-State Employee” means for purposes of this legislation an employee of an Out-of-State business who does not work in the state. “Disaster or Emergency Related Work” means repairing, renovating, installing, building, rendering services or other business activities that relate to infrastructure that has been damaged impaired or destroyed by the Declared State Disaster or Emergency.

4. “Infrastructure” means for purposes of this legislation property and equipment owned or used by communications networks, gas and electric distribution systems, water pipelines, and public roads and bridges and related support facilities that services multiple customers or citizens including but not limited to real and personal property such as buildings, offices, lines, poles, pipes, structures and equipment.

5.. “Declared State Disaster or Emergency” means a disaster or emergency event for which a Governor's State of Emergency Proclamation has been issued or for which a Presidential Declaration of a Federal Major Disaster or Emergency has been issued.

6. "Disaster Period" means a period that begins within ten days of the first day of the Governor's Proclamation or the President's Declaration (whichever occurs first) and that extends for a period of sixty calendar days after the end of the declared disaster or emergency period.

Section 4. {Obligations After Disaster Period.}

A. Business and employee status during disaster period.

1. An Out-of-State Business that conducts operations within the state for purposes of performing work or services related to a Declared State Disaster or Emergency during the Disaster Period shall not be considered to have established a level of presence that would require that business to register, file and remit state or local taxes or that would require that business or its out of state employees to be subject to any state licensing or registration requirements. This includes any and all state or local business licensing or registration requirements or state and local taxes or fees such as unemployment insurance, state or local occupational licensing fees and sales and use tax on equipment used or consumed during the disaster period, public service commission or secretary of state licensing and regulatory requirements. For purposes of any state or local tax on or measured by, in whole or in part, net or gross income or receipts, all activity of the Out-of-State Business that is conducted in this state pursuant to this Act shall be disregarded with respect to any filing requirements for such tax including the filing required for a unitary or combined group for which the Out-of-State Business may be a part.

2. Any Out-of-State Employee as defined herein shall not be considered to have established residency or a presence in the state that would require that person or that person's employer to file and pay income taxes or to be subjected to income tax withholdings or to file and pay any other state or local tax or fee during the Disaster Period. This includes any related state or local employer withholding and remittance obligations.

B. Transaction taxes and fees.

1. Out-of-State Businesses and Out-of-State Employees shall be required to pay transaction taxes and fees including but not limited to fuel taxes or sales/use taxes on materials or services subject to sales/use tax, hotel taxes, car rental taxes or fees that the Out-of-State Affiliated Business or Out-of-State employee purchases for use or consumption in the state during the Disaster Period, unless such taxes are otherwise exempted during a Disaster Period.

C. Business or employee activity after disaster period.

1. Any Out-of-State Business or Out-of-State employee that remains in the state after the Disaster Period will become subject to the state's normal standards for establishing presence, residency or doing business in the state and will therefore become responsible for any business or employee tax requirements that ensue.

Section 5. {Administration.}

A. Notification of out-of-state business during disaster period.

1. The Out-of-State Business that enters the state shall, upon request, provide to the {Designated State Agency} a statement that it is in the state for purposes of responding to the disaster or emergency, which statement shall include the business' name, state of domicile, principal business address, federal tax identification number, date of entry, and contact information.

2. A Registered Business in the State shall, upon request, provide the information required in paragraph 1 of this section for any affiliate that enters the state that is an Out-of-State Business. The notification shall also include contact information for the Registered Business in the State.

B. Notification of intent to remain in state.

1. An Out-of-State Business or an employee that remains in the state after the Disaster Period shall complete state and local registration, licensing and filing requirements that ensue as a result of establishing the requisite business presence or residency in the state applicable under the existing rules.

C. Procedures.

1. The {Designated Agency} shall promulgate necessary regulations, develop and issue forms or online processes to carry out these administrative procedures.

{Section 6.} Effective Date.

This Act shall be effective immediately.

DRAFT The Regulation and Use of Biometric Data Act

Summary

This Act protects an individual's privacy and personal identification information by providing specific guidance and regulations on how biometric identification data may be collected, used, and stored. Though the use of biometric data can be necessary to ensure proper identification in specific settings, it is imperative that this data neither be mishandled nor misused.

Model Legislation

Section 1. {Definitions} The following definitions apply in this Act:

(A) "Biometric data" means fingerprints, handprints, voices, facial mapping, iris images, retinal images, vein scans, hand geometry, or finger geometry.

(B) "Biometric information" means biometric data that is used in a biometric system for fingerprint recognition, hand geometry recognition, finger geometry recognition, voice recognition, facial recognition, iris scans, retinal scans, or vein recognition.

(C) "Biometric system" means an automated system capable of:

(1) Capturing biometric data from an individual's biometric information;

(2) Extracting and processing the biometric data captured under of this Subsection;

(3) Storing the biometric data extracted under Subsection (2) of this Subsection;

(4) Comparing the biometric data extracted under Subsection (2) of this Subsection with biometric data stored for the individual for use in future recognition of the individual; and

(5) Determining how well the extracted and stored biometric data match when compared under Subsection (4) of this Subsection, and indicating whether an identification or verification of identity has been achieved;

(D) "Collector" means a person who collects the biometric information of another individual.

(E) "Contractor" means a person who contracts with a collector to store the biometric information collected by the collector, and includes a person to whom the contractor sells the contractor's business and transfers the biometric information.

(F) "Facial mapping" means the use of digital technology to measure the features of an individual's face.

(G) "Facial recognition" means the use of facial mapping for recognition purposes.

(H) "Finger geometry recognition" means the use of the shape and dimensions of one or more fingers for recognition purposes.

(I) "Fingerprint recognition" means the use of the physical structure of an individual's fingerprint for recognition purposes.

(J) "Governmental entity" means a state agency, a municipality, and an agency of a municipality; in this Subsection, "state agency" means an agency of the executive, judicial, or legislative branch of state government.

(K) "Hand geometry recognition" means the use of the physical structure of an individual's hand for recognition purposes.

(L) "Iris scan" means the use of an image of the physical structure of an individual's iris for recognition purposes.

(M) "Retinal scan" means the use of the pattern of blood vessels in an individual's eye for recognition purposes.

(N) "Vein recognition" means the use of the veins in an individual's skin for recognition purposes.

Section 2. {Biometric information collection}

(A) A person may not collect the biometric information of another individual unless the person first:

(1) Notifies the individual in a clear manner that the biometric information is being collected, the specific purpose for which the biometric information will be used, and how long the biometric information will be kept; and

(2) Receives, in a written, electronic, or other form by which the consent can be documented, the individual's full consent to the collection of the biometric information, the specific purpose for which the biometric information will be used, and how long the biometric information will be kept.

(B) Unless the individual's biometric information was needed for a specific authorized law enforcement, security, or fraud prevention purpose, an individual may, at any time, revoke or amend the individual's consent provided under Subsection (A) of this Section.

(C) Any collection of a digital photo image with a pixel count exceeding the following perimeters is considered a biometric sample and accordingly is to be considered biometric information. Where the width of the head is forty-nine (49) pixels or more of resolution, which corresponds to a maximum full image width of eighty-five (85) pixels or more of resolution, and an image height of one hundred six (106) pixels or more of resolution

Section 3. {Disclosure of biometric information}

(A) A collector and a collector's contractor may not disclose, transfer, or distribute the biometric information of another individual, except to a contractor or to a person to authenticate the identity of the individual providing the biometric information.

(B) A disclosure, transfer, or distribution under Subsection (A) of this section may only be made for the original purpose for which the information was collected.

Section 4. {Sale of biometric information}

(A) A person may not sell biometric information, except that a contractor may sell the contractor's business to another person and transfer the biometric information to the buyer.

Section 5. {Alternate identification}

(A) If a person who administers an occupational examination requires an individual taking the examination to provide biometric information to the person for the purpose of identifying the individual taking the examination, the person may not require that the individual provide the biometric information if the individual provides the person with a valid state issued identification card including but not limited to a state driver's license or a valid federal identification card including but not limited to a U.S. passport to the person administering the occupational examination.

(B) In this section, "occupational examination" includes an examination required for admission to an institution of higher learning.

Section 6. {Disposal}

(A) When a collector no longer needs an individual's biometric information for the collector's original purpose, or if an individual requests in writing that the individual's biometric information be removed from all databases or other storage systems and be permanently destroyed, the collector and the collector's contractor, if any, shall, within 120 days and unless prohibited by other law, a regulation, or a court order, remove the individual's biometric information from all databases and storage systems and destroy the biometric information.

(B) Within 30 days after determining that the collector no longer needs an individual's biometric information for the collector's original purpose or that the individual has requested the removal and destruction, the collector shall notify the collector's contractor, if any, that the collector is to remove the individual's biometric information from all databases and storage systems and destroy the biometric information.

Section 7. {Use of biometric information}

(A) A collector may not use biometric information for marketing purposes or for general surveillance purposes, but a collector may use the biometric information for a specific authorized security or fraud prevention purpose in addition to the specific purpose for which the biometric information was collected.

Section 8. {Storage of biometric information}

(A) A collector and a contractor shall store an individual's biometric information in a secure manner, which may include encryption or another appropriate method, to ensure that the identity of the individual who provided the biometric information is protected.

Section 9. {Right of action}

(A) Except as provided in Subsection (B) of this Section, an individual may bring a civil action against a person who knowingly violates this Act. A person who violates this Act is liable to the individual for actual damages and a penalty of \$5,000, except that, if the violation resulted in profit or monetary gain to the person, the penalty is \$100,000.

(B) An action for damages, a penalty, or both may not be brought against the state, the agencies of the state, or the officers or employees of the state or the agencies of the state for violations of this Act or for other claims arising under this Act.

Section 10. {Exemptions}

(A) This Act does not apply to the collection, retention, analysis, disclosure, or distribution of:

(1) Biometric information for a law enforcement purpose provided a search warrant is issued for the purposes of the identification of perpetrators, or the investigation of crimes, the identification of a reported missing person, the identification of unidentified persons provided the unidentified person has committed an offense or violation of law for which would a physical custody arrest is required, or the identification of human remains; or

(2) Biometric information when authorized by a mandatory state or federal law.

(B) This Act does not apply to the retention of voices recorded for quality assurance purposes.

183
184 Section 11. {Severability clause}
185
186 Section 12. {Repealer clause}
187
188 Section 13. {Effective date}



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